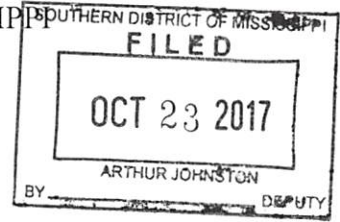


UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION



ALBERTA DAVENPORT, INDIVIDUALLY,
AND ON BEHALF OF THE HEIRS-AT-LAW
AND WRONGFUL DEATH BENEFICIARIES
OF WEBSTER DAVENPORT, DECEASED,
AND THE ESTATE OF WESTER DAVENPORT

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 3:17cv839 CWR-LRA

ISD RENAL, INC. d/b/a DAVITA DIALYSIS

DEFENDANT

NOTICE OF REMOVAL

TO: Earline Wright-Hart, Clerk
Holmes County Circuit Court
22549 Depot Street
Lexington, MS 39095

Carlos E. Moore, Esq.
Tucker/Moore Group, LLP
P.O. Box 1487
Grenada, MS 38902-1487

PLEASE TAKE NOTICE that the Defendant, ISD Renal, Inc. d/b/a Davita Dialysis, hereby remove the action entitled *Alberta Davenport, et al. vs. ISD Renal, Inc. d/ba Davita Dialysis*, Cause No. 2017-00094, filed in the Circuit Court of Holmes County, Mississippi ("State Court Action") to the United States District Court for the Southern District of Mississippi, Northern Division, pursuant to 28 U.S.C. Sections 1332, 1367, 1441, and 1446, and respectfully states to this Court as follows:

1. Plaintiff filed this cause of action in the Circuit Court of Holmes County, Mississippi, on or about April 11, 2017. See Plaintiff's Complaint for Cause No. 2017-00094, attached hereto as Exhibit "A."

2. On September 26, 2017, the Circuit Court of Holmes County entered an Order dismissing Greenwood Leflore Hospital, the sole resident defendant. See Agreed Order of Dismissal attached hereto as Exhibit “B”.

3. As a result of the dismissal, there is complete diversity of citizenship between all Parties. According to the Complaint, the Plaintiffs are adult residents of Holmes County, Mississippi, and thus citizens of and domiciled in Mississippi. See Complaint, Exhibit “A”. Defendant ISD Renal, Inc. d/b/a Davita Dialysis is a Delaware corporation with its principal place of business in Colorado, and is domiciled in Colorado. Accordingly, this Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

3. The United States District Court for the Southern District of Mississippi, Northern Division, has original subject matter jurisdiction over this civil action because there is complete diversity among the parties, pursuant to 28 U.S.C. § 1332.

4. The amount in controversy in this civil action, exclusive of interests and costs, exceeds the sum of \$75,000.00 as evidenced by Plaintiffs’ recent \$500,000.00 settlement demand. See Exhibit “C”, Demand email from Plaintiffs’ counsel. See *Martin v. Leslie’s Poolmart, Inc.*, 2006 U.S. Dist. LEXIS 45595, 3:05-cv-303WS (S.D. Miss. May 18, 2006) (court considered settlement demand of \$425,000.00 in determining threshold for removal).

5. The amount in controversy in this civil action, exclusive of interest and costs, is in excess of the minimum jurisdictional amount of this Court. As shown above, Plaintiffs seek compensatory damages in excess of \$75,000.00, therefore, this minimal jurisdictional threshold is satisfied. 28 U.S.C. § 1332.

6. This Notice of Removal is timely filed because it has been filed within 30 days of the Order dismissing the resident Defendant, which Order was the first appear from which this

Defendant could ascertain that this matter was removable, 28 U.S.C. § 1446(b)(3).

7. This action is not one rendered non-removable by 28 U.S.C. § 1445.

8. Pursuant to 28 U.S.C. Section 1446(a) and Local Rule 5(b) a copy of the entire State court file is attached as Exhibit “D”.

9. Holmes County, the county in which the State Court Action is now pending, is included in the counties comprising the Southern District of The United States District Court for the Northern Division of Mississippi. Therefore, removal to this Court is proper pursuant to 28 U.S.C. Sections 104(b)(4) and 1441(a).

10. No previous application has been made for the relief requested herein.

11. A copy of the Notice of Removal is being served on the Plaintiffs, by and through their attorney of record, and the Clerk of the Circuit Court of Holmes County, Mississippi.

12. Nothing in this Notice of Removal shall be interpreted as a waiver of ISD Renal Inc. d/b/a Davita Dialysis’s rights to assert any defense or affirmative matter, including, but not limited to, the defenses of (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, (4) insufficiency of service of process, (5) improper joinder of claims and/or parties, (6) failure to state a claim, (7) failure to join an indispensable party, (8) statute of limitations, (9) untimely service of process, or (10) any other pertinent defense available under Miss. or Fed. R. Civ. P. 12, or any state or federal statute.

WHEREFORE, Defendant, ISD Renal, Inc. d/b/a Davita Dialysis, respectfully removes this action from the Circuit Court of Holmes, Mississippi, Cause No. 2017-00094 to this Court, pursuant to 28 U.S.C. Sections 1332, 1367, 1441, and 1446. Plaintiffs are hereby notified to proceed no further in this case in the Circuit Court of Holmes County, Mississippi, unless by Order of the United States District Court for the Southern District of Mississippi, Northern Division.

RESPECTFULLY SUBMITTED this, the 20th day of October, 2017.

ISD RENAL, INC. D/B/A DAVITA DIALYSIS,
Defendant

BY: CARR ALLISON, Its Attorneys

BY: 

DOUGLAS BAGWELL, MB #1682
NICOLE C. HUFFMAN, MB #101457

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CERTIFICATE

I, NICOLE C. HUFFMAN, of the firm of Carr Allison, do hereby certify that I have this day mailed, by United States Mail, postage prepaid, a true and correct copy of the foregoing ***NOTICE OF REMOVAL*** to the following counsel of record:

Carlos E. Moore, Esq.
Tucker/Moore Group, LLP
P.O. Box 1487
Grenada, MS 38902-1487
Email: carlos@tuckermooreslaw.com

Earline Wright-Hart
Circuit Clerk, Holmes County
22549 Depot Street
Lexington, MS 39095

THIS, the 20th day of October, 2017.



DOUGLAS BAGWELL, MB #1682
NICOLE C. HUFFMAN, MB #101457